

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, May 30, 2003, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: George Hancock, Gene Carroll, Tom Wanser, and Linda Wibbels (Gerry Krieser absent)
Others: Terry Kathe (Building & Safety), Tonya Skinner (City Law Dept.), Buff Baker (Engineering Services), Becky Horner and Michele Abendroth (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Mr. Hancock called the meeting to order at 1:30 p.m.

Approval of the minutes of the April 25, 2003 meeting

Mr. Carroll moved approval of the minutes as distributed, seconded by Ms. Wibbels. Motion to approve carried 4-0, Hancock, Carroll, Wanser and Wibbels voting 'yes'; Krieser absent.

Appeal No. 2350 by Lee B. Todd for a projection of a porch on property generally located at 4500 South 49th Street.

PUBLIC HEARING

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Becky Horner stated that she had received some photographs from Tom Morrissey, neighbor of Lee Todd, which were taken on May 13, 2003.

Mr. Carroll asked Tonya Skinner to clarify exactly what the appeal today consisted of. Ms. Skinner stated that the board had previously determined that a carport is not allowed in the front yard; however, the Board did not determine if the structure is a carport. What is being considered today is the projection of a porch into the front yard to 13.5 feet.

Lee Todd, owner of the property, stated that he had inquired about extending the deck out from the front of the house, and he was told that he could extend it out to 15 feet. He later found out that a 10 foot projection is allowed, and his house sits back 5 feet more than the required 25, thereby resulting in the 15 foot projection. Regrettably, he did not obtain a permit for this work. After the work was completed, he obtained a permit to extend the deck out 15 feet from the front of the house toward the street.

Mr. Todd noted that he does a lot of community service work, and he is not indifferent to community concerns. The deck is largely for his daughter's use. Also, the only shade trees are in the front yard. He stated that there are reasonable reasons for the variance. The backyard precludes building a deck off the back of the house because it slopes upward from the house. He stated that he is not indifferent to his neighbor's concerns, and he is going to remove the steps on the front of the deck because of Mr. Morrissey's concerns. However, he believes that removing 3.5 feet of the deck serves no purpose.

Lastly, he pointed out that the deck matches the site plan that was approved by the City, with one exception, as he mistakenly measured the front of the deck to the property line which he believed to be 19 feet, but it is 15 feet 7 inches, as he measured to the sidewalk, but should not have done so. The deck still falls within the code requirement which states that the front of the deck can be no closer than 10 feet to the property line.

Ms. Wibbels asked why the City stated that he had not built the deck according to the plans. Mr. Todd stated that he believes they would like him to remove 3.5 feet of the deck. Mr. Carroll stated that the new pictures by Mr. Morrissey show that Mr. Todd is parking his vehicles under the deck. Mr. Todd stated that he needs instructions on how to deal with that situation.

Terry Kathe stated that there is an adjustment on the front yard setback in this district as all of the houses are set back further than the district requirement. This requires us to look at the fronts of the houses and how they line up, and if they are all within 5 feet of each other, 40% of that frontage, then a new setback is established, so the deck can only come out 10 feet. It was clarified that the house sits back almost 30 feet from the property line.

Mr. Hancock asked if there was further testimony in favor of the applicant.

Kelly Tollefson, attorney with Morrow Poppe Otte Watermeier & Phillips PC, appeared on behalf of Lee Todd. She clarified that they are asking for an additional 3.5 feet. She noted that the Board should look at the peculiar or unusual circumstances, and if the applicant would suffer any hardship and have reasonable use of his property. Lastly, the Board needs to determine if this is actually a carport. Ms. Tollefson reiterated that there is an unusual circumstance of the property, as the back yard is not suitable for a deck because it slopes upward and there is an electrical box in the yard. The deck in the front also allows for supervision of their daughter. There are also no shade trees in the back yard. Ms. Tollefson then presented a document signed by Mr. Todd's neighbors saying that they support the deck.

Ms. Tollefson stated that the deck conforms to the R2 25 foot required setback and with the removal of the steps, he would be in compliance with the zoning. It was not until after the permit was issued granting the 15 feet that they voided the permit. They are now saying that he has to comply with the adjusted setback of 29 foot. With respect to Mr. Morrissey's concerns, Mr. Todd has agreed to address Mr. Morrissey's concerns of safety by removing the steps and putting in some tall landscaping. Mr. Tollefson stated that they do not believe that this is a carport, and Mr. Todd has always intended this to be a porch. She noted that there is not a definition in the code of what a carport is, and she does not believe that this body is the appropriate body to define that. The bottom line is that they are asking for a 3.5 foot variance.

Mr. Carroll stated that the statute states that using the 40% or more rule, new buildings shall not be erected closer to the street than the greater front yard setback. Ms. Tollefson stated that is not the issue before the Board; rather, the issue is what the setback requirement is. She noted that if the adjusted setback is applied, it should be applied before a building permit is issued. Mr. Carroll asked Ms. Tollefson if they agree that if this is determined to be a carport, then it is not allowable in this area. Ms. Tollefson stated that if it is determined to be a carport, then they will deal with that issue; however, they do not believe that this is a carport and have never intended it to be a carport.

Ms. Skinner stated that this subdivision has chosen to have a greater setback of 29 feet. The permit was issued on the basis that this was going to be a 10 foot deck instead of a 15 foot deck. She also clarified

that this body is quasi-judicial, which means that it is both legislative and judicial. Mr. Carroll noted that the City attorney's office has determined that this is a double use for both a carport and a deck. Ms. Skinner noted that there are pictures that this being used for cars to park underneath. The Board made the determination at the January meeting that there shall be no carports in the front yard. Mr. Todd also has to drive under this structure to get to his garage. Mr. Wanser questioned if the issue before them today has anything to do with a carport; rather, the issue is whether the deck is going to be 11.25 feet or 14.75 feet. Ms. Skinner replied that is correct; however, the purpose of the structure plays into the decision.

Mr. Hancock asked if there was testimony against the applicant.

Mr. Morrissey, next door neighbor of Mr. Todd, stated that a building permit is required for a reason, so mistakes are not made. He stated that there is a precedent in the neighborhood with the setback. He noted that the City could put the electrical box underground. He also stated that although there is a signed sheet by neighbors, some of the neighbors are not happy with this deck. Mr. Todd has said that he will remove the steps, but he has not done that yet. Mr. Morrissey stated that his concern is the safety of his family. He believes that Mr. Todd needs to build to code. He also stated that although it is a beautiful deck, it belongs in the back and does not fit the neighborhood. He added that he is definitely not in favor of this deck.

Mr. Hancock asked if there was further testimony against the applicant. With no one further appearing, the public hearing was closed.

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Mr. Wanser noted that the issue before the Board is the deck, and there was a building permit issued. He stated that he will vote for the applicant. Mr. Carroll stated that the only unusual circumstance was created by the applicant, and if had gotten a permit prior to building, the problem might have been avoided. The setback requirement is stated exactly as it should be, as far as the 40% rule. He does not see anything unusual or exceptional about the property. On the other issue of this being a carport, he believes that it is a carport. Just on the issue of the deck only, he will vote against this. Ms. Wibbels stated that she is going to vote against as well. She stated that she has observed the structure being used as a carport. She also noted that it was coincidentally built to cover a car, and it was built without a permit, and then the permit was issued with inaccurate information. She stated that this is an unfortunate situation, but cautioned that a permit should be obtained prior to building. Mr. Hancock asked for clarification of the actions taken at the January meeting. Ms. Skinner stated that two of the actions were upholding the determinations made by Building and Safety. The Board also denied the request for a variance for the front yard setback. It was noted that the Board determined that a carport is not allowed in the front yard, but it was not determined if this was a carport or not. Ms. Skinner stated that you cannot make a determination on use. Mr. Wanser added that the action today does not take the structure away; rather, it changes the size. Mr. Hancock stated that the fact of where meters, air conditioners or windows are located do not create an unusual or exceptional condition.

Mr. Carroll made a motion to deny this application, seconded by Ms. Wibbels. Mr. Wanser noted that the unusual condition of the property is the slope of the backyard.

Motion to deny failed 2-2. Carroll and Wibbels voting 'yes'; Hancock and Wanser voting 'no'; Krieser absent.

Appeal No. 2354 by Pete Klucas for a variance of the front yard setback from 15 feet to 10 feet on property generally located at 3845 Touzalin Avenue.

PUBLIC HEARING

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Mr. Klucas summarized that he is asking for a setback on the east side of the building from 15 feet to 12 feet. The unusual circumstance is that the large amount of easements on the property. The key issue from the last meeting was the bike path and line of sight. He presented an updated drawing of the proposed property to the board. Mr. Hancock asked if the building had been moved from the previous drawing. Mr. Klucas stated that it has been moved farther to the south. He also noted that he applied for a new permit. He is asking for a reduction of the front yard setback to 12 feet.

Ms. Skinner asked for a short recess to clarify what the new permit was for. Ms. Wibbels made a motion to take a short recess of approximately five minutes, seconded by Mr. Carroll. Motion to approve carried 4-0, Hancock, Carroll, Wanser and Wibbels voting 'yes'; Krieser absent.

Mr. Hancock called the meeting back to order.

Ms. Skinner stated that there is one permit and two site plans. Mr. Klucas withdrew the old site plan and submitted a new one. He was denied on the original permit, so he is here on the old permit, but the Board can consider the new plan which clarifies some questions from the last meeting. He is still asking for the same variance. Mr. Klucas clarified that he had originally asked for the front yard to be reduced to 10 feet, but only needs the front yard to be reduced to 12 feet.

Ms. Wibbels asked for a determination of the line of sight requirements. Buff Baker of Engineering Services stated that the sight plan meets all the sight distance requirements. He noted that they considered the drive access requirements on Touzalin for traffic and pedestrians, and it meets both of those requirements. They also looked at the traffic from the bike path and it meets the requirements for traffic and pedestrian safety. Mr. Baker concluded that they have no problem with this plan.

Mr. Hancock asked if there was further testimony in favor or against the applicant. With no one appearing further, the hearing was closed.

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Ms. Wibbels moved for approval, seconded by Mr. Wanser.

Ms. Wibbels noted that this is a situation where the applicant is trying to make optimum and best use of the land. She commended the applicant for being patient with the Board for the delay and making accommodations to answer their questions. Mr. Wanser stated that what the applicant is asking for is in union with the rest of the area. Mr. Carroll asked for a clarification on the motion in terms of granting the variance to reduce the front yard setback to 10 feet or 12 feet. Ms. Wibbels amended her motion to include approval for a variance to reduce the front yard setback to 12 feet.

Motion to approve carried 4-0. Wibbels, Wanser, Carroll, and Hancock voting 'yes'; Krieser absent.

Mr. Hancock thanked all those appearing before the Board for their patience, as these were two very complicated and difficult situations.

There being no further business, Mr. Hancock adjourned the meeting at 3:08 p.m.

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